

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2610

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To be argued by
E. THOMAS BOYLE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

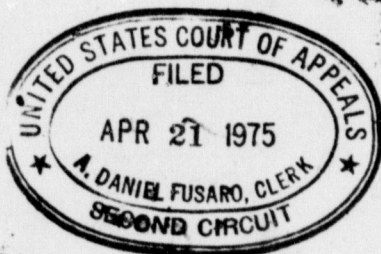
JAMES HENRY ROLLINS,
a/k/a LEE EVANS,

Appellant.

Docket No. 74-2610

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

E. THOMAS BOYLE,
Of Counsel

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PAGINATION AS IN ORIGINAL COPY

[illegible]

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED					
		DATE	NAME	RECEIVED		DISBURSED	
Fine,							
Clerk, 553 ✓							
Marshal,							
Attorney,							
Commissioner's Court, 18							
Attorneys 1341 Mail fraud (Cts 13)							
2113(a) Robbery of insured bank. (Ct. 4)							
(Four Counts)							

DATE	PROCEEDINGS
0-10-74	Filed indictment. Superseding 74Cr877 and assigned to Cannella, J.
10-22-74	Filed motion to dismiss..With memo endorsed...Denied, except for number 4 herein upon which decision is reserved. Exception to the deft....Cannella, J.
10-25-74	Filed letter to Judge Cannella from E.S.Panzer, Esq. Dated 10-17-74.
10-22-74	Trial begun with JURY...Cannella, J.
10-23-74	Trial cont'd.
10-24-74	Trial cont'd. Deft moves for judgment of acquittal as to count 1 - GRANTED Trial concluded. GUILTY Ct.s. 1 & 2 Mistrial Ct. 3 P.S.I. ordered Sent. on 11-27-74 at 9:30 a.m. Bail conditions cont'd.....Cannella, J.

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
10-25-74	Filed Courts exhibit ordered sealed on 10-22-74 and placed in vault.....Room 602 CANNELLA, J.....		
10-25-74	Filed memorandum and order..Prior to and during the trial of this case, the Court reserved decision upon deft's motion to dismiss***count 4. This memorandum serves to express the rationale for the Court's decision on the motion.***Motion granted. Count 4 of this indictment is dismissed as a matter of law....Cannella,J.		
11-4-74	Filed motions for a new trial		
11-4-74	Filed motion for a mistrial & for evidentiary hearing.		
11-4-74	Filed motion for arrest of judgment--Lack of evidence.		
11-4-74	Filed motion for necessities		
11-4-74	Filed motion for time extension.		
11-4-74	Filed motion for arrest of judgment		
11-14-74	Filed memo endorsed on motion filed 11-4-74 for necessities....Denied in part and granted in part...So Ordered....Cannella,J. (Mailed copy to deft)		
11-19-74	Filed affdvt.& notice of motion for rehearing on motion to suppress..Ret.11-27-74.		
12-2-74	Filed motion for reconsideration of motion to dismiss.		
12-2-74	Filed motion and moves the Court to issue an order for the U.S.ATTY. to swear out a complaint against a Postal Inspector.		
12-3-74	Filed affdvt. of Richard Wile,AUSA in opposition to the multifarious post-trial motions.		
12-4-74	Filed memo endorsed on motion filed 12-2-74.**The application is denied in all respects.....Cannella,J. (Copy to deft.& U.S.Att.)		
Dec-9-74	Filed memo endorsed on motion filed 11-4-74. Motion is denied in all respects. Cannella, J. (Motion for arrest of judgment.)		

DATE

PROCEEDINGS

- Dec. 9-74 Filed memo endorsed on Motion filed on 11-4-74 for an evidentiary hearing.
Motion is denied in all respects. So ordered. Cannella, J.
- Dec. 9-74 Filed memo endorsed on Motion filed on 12-2-74 for reconsideration to dismiss.
Reconsideration Granted. Upon reconsideration the Court denies the motion to dismiss or for arrest of judgment in all respects. So ordered. Cannella, J.
- Dec. 9-74 Filed memo endorsed on Motion filed Nov 14-74 for new trial - Motion is denied in each and every respect. So ordered. Cannella, J.
- Dec 9-74 Filed memo endorsed on Motion filed 11-19-74 for rehearing- Motion for reargument is denied. The Court adhered to its earlier memorandum decision. So ordered.
Cannella, J.
- Dec 9-74 Filed memo endorsed on Motion filed 11-4-74 for arrest of judgment-lack of evidence- Motion denied in all respects. So ordered. Cannella, J.
- Dec. 11-74 Filed Judgment (#) Atty. Edward Panzer, present. The deft is committed for imprisonment for a period of THREE and ONE HALF YEARS (3½) on each of counts 1 and 2, to run concurrent with each other, and FINED \$1,000.00 on each of counts 1 and 2. Total fine of \$2,000 to be paid or deft is to stand committed until fine is paid or he is otherwise discharged according to law. Sentence to run consecutive with any sentence heretofore imposed in the State of Missouri... Count 3 is dismissed on motion of deft's counsel with the consent of the Govt..... Cannella, J.....
Ent. 12-11-74-----
Present bail conditions to be re-written pending appeal.....
- 12-11-74 Filed notice of appeal from judgment of 12-11-74... copy given to U.S. Atty. and mailed to Atty. E.S. Panzer 299 B'Way NYC... Leave to appeal in forma pauperis is granted.... Cannella, J...

Raymond E. Burghardt
 A TRUE COPY
 RAYMOND E. BURGHARDT, Clerk
 DE
 Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 951

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UNITED STATES OF AMERICA :

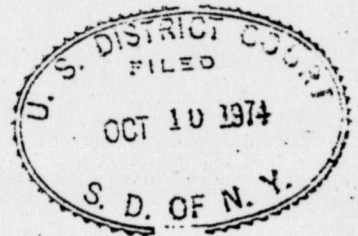
-v- :

JAMES HENRY ROLLINS, :
a/k/a Lee Evans, :

Defendant. :
----- x

INDICTMENT

S 74 Cr.



The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, JAMES HENRY ROLLINS, a/k/a Lee Evans, the defendant, and others presently unknown to the grand jury, unlawfully, willfully and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises. The persons defrauded by said scheme included, among others, the Manufacturers Hanover Trust Company, New York, New York, and the Standard Bank Limited, a bank incorporated in the United Kingdom with branch offices in Nairobi, Kenya, and New York, New York.

2. It was a part of said scheme and artifice to defraud that JAMES HENRY ROLLINS, a/k/a Lee Evans, the defendant, acting under the name Robert Cody, would and did open account number 021 0030 0016 0 36526 at the Manufacturers Hanover Trust Company, 37 Avenue B, New York, New York, in the name of Kodi's Domestic & International Enterprises ("Manufacturers Account").

MICROFILM

OCT 10 1974

forms would be and were mailed, by JAMES HENRY ROLLINS, a/k/a Lee Evans, the defendant, and persons presently unknown to the grand jury acting in concert with him from Nairobi, Kenya to the Manufacturers Account.

4. It was further a part of said scheme and artifice to defraud that the mail transfer forms would and did fraudulently and falsely represent on their face that a transfer of funds in excess of \$650,000 was authorized from the Standard Bank Limited, Nairobi, Kenya, to the Manufacturers Account.

5. On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, JAMES HENRY ROLLINS, a/k/a Lee Evans, the defendant, unlawfully, willfully and knowingly and for the purpose of executing such scheme and artifice to defraud and attempting to do so, caused to be delivered by mail according to the directions thereon matters and things to be sent and delivered by the United States Postal Service, as hereinafter set forth:

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>	<u>CONTENTS</u>	<u>AMOUNT</u>
1	August 21, 1974	The Manager, Manufacturers Hanover Trust Company, 37 Avenue B, New York, New York 10009, U.S.A.	Mail Transfer Form	\$301,097
2	August 30, 1974	The Manager, Manufacturers Hanover Trust Company, 37 Avenue B, New York, New York 10009, U.S.A.	Mail Transfer Form	\$352,165

(Title 18, United States Code, Section 1341 and 2.)

COUNT THREE

The Grand Jury further charges:

From on or about the 1st day of January, 1973, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, JAMES HENRY ROLLINS, a/k/a Lee Evans, the defendant, unlawfully, willfully and knowingly did use, assume and request to be addressed by a fictitious, false and assumed name other than his own proper name, to wit, the name Robert Cody, for the purpose of conducting, promoting and carrying on by means of the Postal Service the scheme and device to defraud set forth in Counts One and Two of this Indictment.

(Title 18, United States Code, Section 1342.)

COUNT FOUR

The Grand Jury further charges:

On or about the 9th day of September, 1974, in the Southern District of New York, JAMES HENRY ROLLINS, a/k/a Lee Evans, the defendant, acting under the name Robert Cody, unlawfully, willfully and knowingly did enter a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, to wit, Manufacturers Hanover Trust Company, 37 Avenue B, New York, New York, with the intent to commit a larceny and felony in and affecting such bank, to wit, the theft of approximately \$650,000.

(Title 18, United States Code, Section 2113(a).)

Richard Colbridge
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JAMES HENRY ROLLINS,
a/k/a Lee Evans,

Defendant.

INDICTMENT

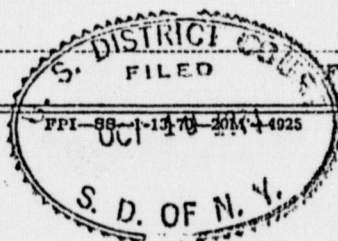
(S 74 Cr.)

(in violation of 18 U.S.C.
§§ 1341, 1342,
2113(a) and 2.)

PAUL J. CURRAN

United States Attorney

A TRUE BILL



10-10-74 - DEFT. ROLLINS (ATTY. PRESENT)

PLEA ADJOURNED TO 10-11-74 AT 10 AM

MR. GREENBLUM (LOCAL A.D.) RELIEVED

ATTORNEY FOR DEFT.

MR. PANZOL ASSIGNED AS ATTORNEY
FOR DEFT.

CANNELLA, J.

11 OCT 1974

DEFT. ROLLINS (ATTY. PRESENT)

PLENDS NOT GUILTY TO EACH OF

COUNTS 1-2-3 & 4 -

MOTIONS HEARD -

BAIL CONDITIONS ARE CONT'D

CANNELLA, J.

16 OCT 1974 TRIAL ADJOURNED TO 10-21-74

22 OCT 1974 TRIAL BEGUN BEFORE CANNELLA, J.
WITH A JURY,

23 OCT 1974 TRIAL CONTINUED -

24 OCT 1974 TRIAL CONTINUED - NEXT MOVES FOR
JUDGMENT OF ACQUITTAL AS TO COUNT 4 - (GOVERNMENT)

IS TO COUNT 3 — ~~1~~ JURY POLLED,
PSI ORDERED — SENT. ON 11-27-74 AT
BAIL CONDITIONS CONT'D —

CANNELL

Per

11 DEC 1974

AUSA WILE

DEFT. JAMES HENRY ROLLINS — (ATTY. PRESENT) EDWARD
SENTENCED TO THREE AND ONE HALF ($3\frac{1}{2}$) YEARS ON EACH
COUNTS 1 AND 2, TO RUN CONCURRENT WITH EACH OTHER
AND FINED \$1,000⁰⁰ ON EACH OF COUNTS 1 & 2, TOTAL
FINE OF \$2,000⁰⁰ TO BE PAID OR DEFT. IS TO STAND COMM
UNTIL FINE IS PAID OR HE^{IS} OTHERWISE DISCHARGED ACC
TO LAW. SENTENCE TO RUN CONSECUTIVE WITH
SENTENCE ~~HEREFORE IMPOSED IN THE STATE OF MISSOURI~~ COUNT 3 IS DISMISSED ON MOTION
OF DEFT.

DEFT. ADVISED OF HIS RIGHT TO APPEAL.

PRESENT BAIL CONDITIONS TO BE RE-EXAMINED PENDING
CANNELL, J.

QU

CHARGE OF THE COURT

THE COURT: Mr. Foreman and members of the jury,
Mr. Wile, Mr. Panzer:

At the outset I want to thank you for the careful attention you have paid to this case. It has not been a long case, but I noticed that you have followed it with interest and with complete attention.

I also thank the lawyers for assisting me during the course of the trial on questions of law, and on your behalf and my behalf I thank them for the help they have been to the Court.

If we reflect a little on what has happened in the way of testimony during this case, we come to the conclusion pretty quickly that there are a number of things which the parties agree upon here. There is no question that there are these banks that have been testified to. There is no question that there was a bank account. There is no question that in some manner the orders from the Nairobi bank came to New York and that they landed in this branch. And there are many other areas of agreement between the parties.

However, there are also areas of disagreement, areas upon which they don't agree. It is because of these areas in which they do not agree that questions of fact

1 arise. As far as questions of fact are concerned, you are
2 the sole and sovereign judges of the fact. You are the only
3 ones that pass on the credibility of the witnesses in this
4 case. It is your obligation under the oath you have taken,
5 without fear or favor, to determine the issues in the case
6 and make a finding.
7

8 Questions of law you must accept from the Court,
9 and you must apply the law as I give it to you to the facts
10 as you find them.

11 The grand jury indicted this defendant and charged
12 him as far as you are concerned now with three separate
13 charges. Two of them are based on the one statute called
14 the mail fraud statute, and the third one is based upon the
15 use of a fictitious name.

16 He cannot be convicted of that third count unless
17 you find him guilty of either one or two, the first or the
18 second count or both, because the third count relies upon
19 the first two counts or either one of them or both of them.

20 I will bring that to your attention again at the
21 end of the charge so that you will understand what I am
22 talking about.

23 When the grand jury indicted him, that became
24 an accusation and he pleaded not guilty and therefore he put
25 the Government on its proof as to each and every material

fact in the indictment as to each charge in the indictment.

Under our system of government there is a presumption that a defendant is innocent, he is presumed innocent, unless and until the government proves his guilt by credible evidence beyond a reasonable doubt. The burden of proving the defendant's guilt beyond a reasonable doubt rests upon the government, and this burden never shifts throughout the trial. The law does not require the defendant to prove his innocence or to produce any evidence. He may rely upon the evidence brought out on cross-examination of witnesses for the Government.

If the Government fails to prove the defendant's guilt by credible evidence beyond a reasonable doubt, it is your obligation to acquit him.

The tool used in order to establish a fact in a lawsuit is called evidence. Evidence may be described in a number of ways.

The first I would invite your attention to is quantitatively and qualitatively. The quality of the evidence refers to credible evidence, which simply means believable evidence. The quantity of the evidence -- that is, the amount of the evidence or the quantum of the evidence -- must be beyond a reasonable doubt.

The term "reasonable doubt" defines itself. A

2 reasonable doubt means a doubt that is based on reason, and
3 must be a substantial rather than a speculative doubt;
4 it must be sufficient to cause a reasonably prudent person
5 to hesitate to act in the more important affairs of his life.
6 Such a doubt can arise from the evidence that is produced
7 or from the lack of evidence.

8 Evidence can also be described by dividing it in
9 this fashion: the testimony of witnesses who come here and
10 under oath tell you what they know about the case, plus any
11 natural inferences that flow from that testimony, and
12 anything that is brought out at any time that the witness is
13 on the witness stand, either by cross-examination or redirect
14 examination or otherwise. It includes any exhibits which
15 have been produced in the case.

16 There are a number of exhibits in this case. I can
17 see from here that post office register book, for example.
18 You will consider in arriving at your judgment in this case
19 all the exhibits which have been offered in evidence. There
20 are some exhibits which may not have been offered in evidence.
21 I don't recall. Some of them may have been marked only for
22 identification and never offered. In such a case you may not
23 speculate upon what was in that particular exhibit. You are
24 bound by what you hear said under oath.

25 Similarly, some reports were referred to. For

1 example, there was a report of Slavinski. Except for the
2 portions of it which were mentioned during the course of
3 the testimony, you may not speculate as to what was in the
4 rest of the report, because the report was never put into
5 evidence by either side.
6

7 In addition to exhibits and testimony, we can also
8 divide it into stipulations, which are considered part of
9 this subdivision, and that is the agreement between the
10 parties. . . . You heard that there were two stipulations in
11 this case. You will consider them as evidence in the case.

12 The last way that evidence can be described in
13 these subdivisions is judicial notice, matters of which the
14 Court takes judicial notice. There are many things that the
15 Court acknowledges without requiring proof. For example,
16 the various addresses and locations that have been mentioned
17 as to the Manufacturers Hanover Trust Company are within the
18 Southern District of New York and therefore we have a right
19 to hear this case.

20 Evidence can also be described as direct evidence
21 and circumstantial evidence. In this regard it is important
22 that you understand this concept. Direct evidence is
23 evidence of a witness who comes here, like an eyewitness,
24 and tells you what he has seen or heard or smelled, that is,
25 by the use of his senses. He comes here and reports to you.

1 wc 57 Charge of the Court 322
2 Circumstantial evidence is a chain of events which leads you
3 to a conclusion.

4 The law makes no distinction between direct
5 evidence and circumstantial evidence. There are some people
6 that think that when a case is proved by circumstantial
7 evidence, it is not as strong as a case proved by direct
8 evidence. That is not necessarily so. And the law makes
9 no distinction. The only thing the law requires is that at
10 the end of considering all the evidence in the case, whether
11 it be direct, circumstantial, or a combination of both, you
12 be satisfied beyond a reasonable doubt of the defendant's
13 guilt before you vote such a conviction.

14 How does circumstantial evidence affect this
15 case? Because, as Mr. Rollins has said, nobody came here
16 and said they actually saw him do something, except maybe
17 in setting up these bank accounts and so forth. But, other
18 than that, they did not.

19 Circumstantial evidence is used by you every day
20 of your life. If you go down and wait for a train, you do
21 not actually know that there is a train at the other end of
22 the track, but you know that you have been there before,
23 you know that there are trains running according to a schedule
24 and eventually the train will get there, so you wait.

25 A person, for example, is going to describe to a

wc 58

Charge of the Court

child what a duck looks like, and the child is blindfolded. The adult says to the child, "This particular thing moves," and then continues on, "It has two legs," and then continues on and says, "It has feathers," and then continues on and says, "It has a yellow beak"; then continues on and says, "When it walks, it waddles"; then continues on and says, "It quacks." Those are all different elements of circumstantial evidence.

At what point do you reach the conclusion that it is a duck? Is it when it is something with two legs? Is it when it is something that has feathers? Is it when it has a yellow beak? You will have to come to the conclusion in this case, when you connect all the links, when you add up all the pieces of circumstantial evidence in this case as well as all the other evidence in the case, as to whether or not the government has reached that stage where they have satisfied you beyond a reasonable doubt that in fact there was this artifice and scheme and that the defendant was a knowing part of it.

But, in doing that, you will have to consider the totality of the evidence, everything that is in the case. Then, when you do that, you will analyze it in the fashion which I have described to you.

It is important for you to know in a case what is

1 not evidence in order to assist you to make sure that you
2 are deciding the case only upon the evidence in the case.
3 The first thing I call to your attention, which is not
4 evidence, is the indictment. This indictment was voted by
5 the grand jury, and it is only evidence of one thing: that
6 there is an accusation. It does not prove anything else.
7 So, as far as the indictment is concerned, it can't help you
8 in an evidentiary way. It is not evidence.

9
10 The comments of the lawyers and of the defendant
11 himself during the course of the trial -- and you heard me
12 tell this to the defendant on one or two occasions -- are not
13 evidence in the case, because we were not sworn. We did not
14 take an oath. And you cannot decide the case on what we
15 said, because we did not testify.

16 When questions were asked which contained a fact,
17 the question itself is not evidence, and so the fact that is
18 in the question you may not assume, unless it was proven
19 during the rest of the trial. Until it is proven, it is
20 simply part of a question and not evidence. It is the
21 answers which are evidence in the case. And any matter which
22 was stricken from the evidence by way of a motion made by
23 either side will not be considered by you, because that is
24 not evidence either.

25 The defendant has in this case decided that he

1 wanted to be his own lawyer, with the assistance of one of
2 the distinguished lawyers from our district here, Mr.
3 Panzer. I remind you again that the questions asked and the
4 statements made by the defendant acting in his role as
5 attorney are not evidence and are not to be considered by
6 you in any fashion different from those made by other lawyers.
7

8 In accordance with the instructions I just gave
9 you, certain remarks which were made on the opening which
10 were never proven may not be considered by you as evidence.
11 You are bound to decide this case according to the evidence
12 as you heard it and as you find it.

13 The fact that the defendant decided to be his own
14 lawyer may not be held against him. We have a right to be
15 our own lawyer. Anybody. You cannot erode that right by
16 saying in effect, "Well, he is taking his own case in his
17 own hands and therefore we are going to hold that against
18 him." You cannot do that. You must treat him the same as
19 if he were being represented by a lawyer and that the lawyer
20 was making all these presentations for him.

21 The only caveat that I give you is the one I just
22 mentioned a minute ago: that if he says something which was
23 not proven as part of his argument while he is acting as a
24 lawyer, you cannot accept that as evidence. I think you
25 realize that. I made that more than plain.

2 How do we evaluate the evidence, which is
3 essentially what the principal job that you have here is.
4 It is to analyze this case and come up with a verdict. We
5 have no IBM machine that can assist you in arriving at a
6 judgment. We must rely upon what juries have relied upon
7 for many centuries. I will invite your attention to some of
8 these norms.

9 The first is the demeanor of the witness. How did
10 the witness appear to you on the stand? Did the witness
11 appear to be saying things which conform with some of the
12 things that you feel have already been proven in the case
13 at that point? Did the witness hesitate in answering to
14 beg time, maybe to consider the answer so that it would be
15 a matter of advantage to either side? Did the witness
16 impress you as speaking freely? In other words, what we
17 are saying to you is this: that you exercise common sense.
18 You exercise that same fine discernment of judging and
19 sizing up people as you would in your everyday life in
20 matters of importance to you.

21 Interest, of course, is an element which the jury
22 always considers. The witnesses in this case have been gone
23 over by both sides. I therefore have said very little about
24 the facts, because I think they have covered them very well,
25 both sides have. But just roughly to run over them: There

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are two men from the bank and a lady from the bank. They are bank representatives, and that is their interest in the case. Slavinski is a government agent, and of course he is employed by the United States. You remember I told you, however, that a witness, because of his job, is no more believable than he is disbelievable. You treat him the same as any other witness. But you keep in mind his interest. The two people from the Standard Bank Limited down in Nairobi are bank employees. I thought both looked young, but they worked about 19 1/2 years or 19 years in the bank. They of course are interested in the integrity of the bank and their own integrity.

As to Hunvald, the law professor, I don't know what interest he could have in this case. He simply was called here and asked to identify a student of his, as he thought it was, and that is what he said. But consider that he is a professor.

Lewis was the woman that testified, and she apparently knew him under a different name. You know that the defendant has already indicated to you the manner in which she testified and what she said. Essentially all she wound up saying was that she knew him as Lee Evans back in 1971.

The passports were produced by the police officer.

1 I don't know what interest he would have in this case.

2 He simply went there and seized some material and brought it
3 to his office.
4

5 The two experts are both government experts, and
6 they testified in their field of expertise. O'Donnell was
7 from the telephone company, and the only interest he had was
8 to produce a record here.

9 Then the defendant produced two witnesses: the
10 building superintendent and Fountain, the designer. The
11 building superintendent simply said what happened in the
12 building, who were the tenants. Fountain indicated some
13 relationship he had with the defendant.

14 Considering the interest of each one of those
15 witnesses, you will make a determination as to how much of
16 their testimony you are going to accept.

17 The rule applies to everyone, however, that if
18 any witness has falsely testified to any material fact, you
19 must disregard that portion of it which is false. On the
20 other hand, you may accept that portion of it which you
21 believe to be true.

22 What I am talking about now is what in effect is
23 called the evaluation of testimony. In evaluating the
24 experts' testimony there are certain rules and norms which
25 follow. First you must find that the witness is an expert

1 in the field in which he is talking, either by way of
2 experience, education, or otherwise. For example, it would
3 be perfectly legitimate, if there was a question whether a
4 pipe was put in properly in this wall, that a plumber be
5 called who never went to school in his life and became an
6 apprentice with his father 60 years ago and was a plumber
7 all his life, had no formal education whatsoever, to testify
8 as an expert to tell you how this pipe is supposed to be put
9 in there. Because he has more knowledge of that area than
10 you or I do, and he can help you in that area.
11

12 Similarly with a handwriting expert: that man can
13 come in and help you. Also with the fingerprint man. Any
14 expert, medical or otherwise, can come in here and help the
15 jury.

16 Their testimony is advisory. It is not conclusive
17 upon you. You don't have to accept their judgments. They
18 are here to help you, and you can or cannot accept their
19 testimony according to the way you see it. You are the ones
20 who make the final judgment.

21 Of course, you have got to recognize what the
22 facts are upon which the expert is basing his judgment. If
23 the facts conform with what your understanding of the facts
24 is, then of course you are in a position to accept his
25 testimony if you desire to do so.

Essentially, most of these experts, particularly in this case, are simply another example of that circumstantial evidence rule I was talking to you about before. Because, if you will recall the fingerprint man, he said, "I found twelve similarities here." So he has twelve links in his chain. He says according to what he studied and according to what he knows if you get as many as eight, that is sufficient for you to give an opinion. I, however, took the trouble to find twelve. You will recall his testimony. You evaluate it and you use your own judgment on it.

The handwriting expert is another example of circumstantial evidence. From the way it was written on the questioned document compared with the writing on the known document, after a comparison of them, he came to the conclusion that he was satisfied that the writing was done by the same person in the areas where he indicated that.

In any event, you will consider their testimony and consider the facts, and you can also look at the handwriting, for example, and come up with a judgment of your own.

The defendant has an absolute right not to take the stand and to testify. You may not draw a presumption of guilt or any inference against the defendant because he did not testify.

We now come to a number of definitions which you

1 will have to understand in order to find out whether the
2 charges which are spelled out in the indictment have been
3 proved by the government by credible evidence beyond a
4 reasonable doubt.
5

6 There are three of them which I will discuss
7 together, and they are the words "unlawful," "knowing," and
8 "willful." Actually, as the defendant indicated to you,
9 this is the nub of this case, because unless he did act in
10 a fashion which was unlawful, knowing, and willful, he is
11 not guilty of any of these charges.

12 What does "unlawful" mean? "Unlawful" means against
13 the law. Against what law? In this particular case we are
14 talking about the mail fraud sections of the law passed by
15 Congress. They passed this law. There is no federal crime
16 unless Congress says that there is.

17 In this particular area Congress has said, "This
18 is a crime," and this is the law we are talking about and
19 this is the law he must violate before you may find him
20 guilty of this charge.

21 The second word is "knowing." Our whole system of
22 government as far as the criminal law is concerned is based
23 upon the concept of knowing and willful. It is because we
24 have willful and the ability to act or not to act and we
25 exercise that judgment that if we exercise it in a proscribed

1 manner, where Congress has said you cannot do that, then you
2 are violating the law. But you must do it willfully. You
3 must have a choice and you must exercise the choice.
4

5 "Knowing" means to do something voluntarily and
6 freely, not through mistake, inadvertence or in good faith.
7 That is what that word means in this context. "Willfully"
8 adds to that a further concept. The Romans called it the
9 mens rea, the evil mind, the bad motive, the bad intention.
10 A criminal act. So he has to act in this fashion before you
11 may find him guilty of any of these charges.

12 There is a term used, "scheme or artifice." A
13 scheme to defraud under the mail fraud statute means some
14 plan to produce money or property by means of false pretenses
15 or representations calculated to deceive persons of ordinary
16 prudence. Of course, here we are talking about a bank, but
17 they operate by way of persons, and so that is the kind of
18 thing we are involved with here. The bank was being led into
19 this situation because of the various documents which were
20 submitted and which you have seen in this case.

21 The government must prove that the defendant
22 participated in such a plan and that such representations
23 were made by him or his agents knowing they were false and
24 with the intent to defraud. It is not necessary, however,
25 that any person or bank was actually defrauded by the scheme.

When I say letter, that includes also the contents of the letter, because here there were two letters, as I remember it, and they contained two documents, and that includes the enclosures as well as the outside cover itself. To act with intent to defraud means to act knowingly with the specific intention to deceive, ordinarily for the purpose either of causing some financial loss to another or bringing about some financial gain to oneself.

Here, of course, if the thing had gone through, one of the two banks would have lost this money, and whoever got the money would have gained the money. So that is the kind of thing we are talking about.

The indictment also contains what in effect is the concept of aiding and abetting someone. We know that many times a person or a group of persons does something, and that when a particular crime is done, more than one person is involved. It is not necessary to prove that one person did every single thing that comprises the elements of a crime. As a matter of fact, Congress has passed a law in this regard and says this: Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, or whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is guilty of a crime.

Every person who willfully participates in the commission of a crime may be found guilty of that offense. The defendant need not personally perpetrate every act constituting the offense charged in order to be found guilty.

Those are generally the definitions that you have to know in order to decide this case.

Now we come to the indictment itself. You will

1 get a copy of this, because in voting you can put alongside
2 the margin, Mr. Foreman, how you find in each particular
3 count. There are three of them. The first two counts are
4 exactly alike, they are on the same basis, and they indicate
5 different dates and they indicate a different instrument.
6 But generally they are based on the same law.
7

8 The law upon which the first two counts are based
9 provides: Whoever, having devised or intending to devise
10 any scheme or artifice to defraud, or for obtaining money
11 or property by false or fraudulent pretenses, representations
12 or promises, for the purpose of executing such scheme or
13 artifice or attempting to do so, places in any post office
14 or authorized depository for mail matters any matter or
15 thing whatever to be sent or delivered by the postal
16 service or takes or receives therefrom any such matter or
17 thing or knowingly causes to be delivered by mail according
18 to the direction thereon any such matter or thing, is guilty
19 of a crime.

20 In this particular case the elements of this crime
21 are as follows: In order to find the defendant guilty of
22 this crime charged in Counts 1 and 2, you must find that
23 the government has proved by credible evidence beyond a
24 reasonable doubt, first, that during the time period alleged
25 in the indictment -- and in Count 1 the time period is stated

to be August 21, 1974, and in the second count August 30, 1974 -- the defendant devised or intended to devise a scheme or artifice to defraud or to obtain money or property by means of false and fraudulent pretenses, representations or promises, or that he aided and abetted another person who had devised or intended to devise such a scheme or artifice. That is the first thing you have to show: that there was such a plan and the defendant was part of it or aided someone in it.

Second, you must find that pursuant to such scheme the defendant used the mails or caused the mails to be used or aided and abetted another person who used the mails or caused them to be used. That means there had to be a mailing here.

You can look at those envelopes and you can see where they are addressed to and so forth. You remember the testimony in the case. You will consider all that.

Also there is this to be said about it: You know there was some testimony that there was a slot and also another device for taking deposits. The testimony as far as the case is concerned was by Mr. Portale, I think his name was, that he got it at his desk as a result of office practice and that was the way mail was distributed. Therefore, as far as he was concerned, it was part of the mail.

2 The last item that the Government has to prove is
3 that the defendant acted unlawfully, willfully, and
4 knowingly. I have just defined that term for you and you
5 know what that means. Very briefly, it means he acted
6 freely and voluntarily, knowing that he was doing something
7 wrong, not in good faith, not by inadvertence, not by
8 mistake, but that he had an evil intent to commit the
9 purpose, the purpose here being very clear, to get this
10 \$650,000 from these Nairobi banks, and which were frauds.
11 They in fact did not represent real bank documents; they
12 were fraudulent documents. And therefore one of the banks,
13 and probably the Manufacturers, would have lost that money,
14 and whoever got the money would have gained it.

15 This is the nub of the case, as I told you before;
16 and as the defendant himself has indicated to you, he denies
17 that he had anything to do with this that was wrong, illegal
18 or unlawful. You have heard his position on that. You have
19 also heard the government's position on that, that it is
20 incredible from the chain of events and from the totality
21 of the evidence and from the number of items of circumstantial
22 evidence which corroborate the happening of this crime that
23 he in fact did not commit it unlawfully.

24 You will have to consider all the evidence in the
25 case. You will have to consider the argument of both sides.

1 You will have to make a judgment of your own based upon your
2 conscience. And if you find that the government has proven
3 each one of these elements of these counts by credible
4 evidence beyond a reasonable doubt, you should convict the
5 defendant. On the other hand, if you find that the
6 government has failed to prove any one or more or all of
7 the elements concerned in these two counts, then it is your
8 obligation to acquit the defendant.
9

10 You consider each count separately and come to a
11 separate judgment on each one of these two counts.

12 In reference to the use of the mails in a scheme
13 to defraud, which is an essential element of this crime: It
14 is not necessary that the use of the mail be contemplated
15 by the scheme or that the defendant does any actual mailing
16 himself or intends that the mail be used. It is sufficient
17 to establish this element of the crime if the mails were in
18 fact used to carry out the scheme and that the use of the
19 mail was reasonably foreseeable.

20 In other words, if you were going to do something
21 like this and you wanted to transfer something from Nairobi
22 to the United States, how would you do it? Would it be
23 foreseeable that you would simply put it in an envelope,
24 address it, put the stamps on it and send it?

25 The mail matter need not disclose on its face any

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fraudulent representation or purpose, but need only be intended to assist in carrying out the scheme to defraud.

The gist of the offense charged in Counts 1 and 2 is the willful misuse of the mail, because that is what Congress was protecting in carrying out or attempting to carry out a scheme to defraud as charged and not the scheme itself, so that the success or the failure of the scheme is immaterial and it is not necessary to show that any person was in fact defrauded.

Of course, here we know that the money was never passed, and so actually nobody was defrauded in this case. But that is essentially immaterial within the confines of the remark I just made.

Each mailing is a separate offense, and that is why there are two counts here, so that you will make a judgment on each one of the counts.

As I have previously stated when I described to you the concept of aiding and abetting, it is not necessary that the defendant personally did every act as charged. While there is no precise rule as to what constitutes aiding and abetting, it is enough that a defendant in some manner associated himself with the illegal venture, that he participated in it as something he wished to bring about, and that he seeks by his actions to help it succeed. One who

aids and abets another in the commission of the crime is equally guilty with the person who actually physically committed it. Therefore, if you find beyond a reasonable doubt with respect to any of the counts in this indictment that the defendant committed the crime charged or that he aided and abetted others in its commission, you may find that he is guilty of that particular offense.

The last charge is Count 3, which is the last discussion we will have, and of course, as I indicated before, the defendant is charged in Count 3 with having violated a section of the code which provides as follows: Whoever for the purpose of conducting, promoting or carrying on by means of the postal service any scheme or device mentioned in Section 1341, which is the mail fraud section of Counts 1 and 2, or any other unlawful business, uses or assumes or requests to be addressed by any fictitious, false, or assumed name, commits a crime.

So, you see, he cannot be guilty of Count 3 unless you find him guilty of either Counts 1 or 2. If you find him innocent on Counts 1 or 2, there is no need for you to go on to Count 3.

Have I made myself plain, Mr. Foreman?

THE FOREMAN: Yes, your Honor.

THE COURT: In reference to this count, what are

the elements? In order to find the defendant guilty of the crime charged in Count 3, you must find that the government has proven the following essential elements beyond a reasonable doubt:

(1) that during the period of the time alleged in the indictment the defendant used, assumed, or requested to be addressed by the false, fictitious or assumed name Robert Cody, which is not his own proper name;

(2) that the defendant used the name Robert Cody for the purpose of conducting, promoting or carrying on a scheme or device to defraud by the use of mail set forth in Counts 1 and 2 of the indictment.

The use of an assumed or fictitious name by an individual is not a crime in itself. We know many people that use assumed names. For example, if I said to you, "Who is Bernie Schwartz," you would say, "That's Tony Curtis." And if I said to you, "Who is Archie"-- I can't think of his last name --

JUROR NO. 4: Leach. Cary Grant.

THE COURT: -- Leach, that's it. Cary Grant. So there isn't anything wrong about using another name. Where it gets to be wrong is if, in using that name, you do it for a fraudulent purpose. You can go along for years and use a name and nothing ever happens; but then if you get into

2 something which is illegal, and you are using that name,
3 then of course you are in trouble.

4 Such use or holding out becomes a crime when it
5 is done for the purpose of carrying out a scheme to defraud
6 by the use of the mails as charged in Counts 1 and 2. It
7 is the defendant's use of a name other than his own to
8 obscure his identity for the purpose of promoting or carrying
9 on a mail fraud scheme that constitutes the offense. Hence,
10 you must find the defendant guilty beyond a reasonable doubt
11 of either Count 1 or Count 2 or both before you can make a
12 judgment on Count 3, which we are discussing now.

13 In addition, you must find beyond a reasonable
14 doubt each of the elements of the crime charged in Count 3
15 by credible evidence beyond a reasonable doubt before you
16 may convict the defendant of that charge.

17 If you find that the government has not proved
18 these elements, any one or more or all of them, to your
19 satisfaction by credible evidence beyond a reasonable doubt,
20 or that the name Robert Cody was not used by the defendant
21 for the purpose of the mail fraud scheme charged in Counts 1
22 and 2, then you must acquit the defendant on Count 3.

23 To summarize this, you must find that the defendant
24 has proved to your satisfaction by credible evidence beyond
25 a reasonable doubt each of the elements charged in any count

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before you may find a defendant guilty under that count.
If any one or more or all of the elements of the particular
count are not proven to your satisfaction beyond a reasonable
doubt, then you must find the defendant not guilty of that
particular count.

Sympathy and bias play no part in this case. We
are all sympathetic and we have biases, even though we may
not want to admit them. But we do have them. And we do have
sympathy. But this is not the forum for either one of them.
You remember you took an oath here, and you don't want to
stultify your oath by deciding this case on anything except
what you took the oath to do, namely, to decide this case on
the evidence as you heard it here in the courtroom and the
law as given to you by the Court.

Punishment plays no part in your deliberations.
It cannot help you establish what the facts are. That is the
first logical thing. The second thing is that you have
nothing at all to do with punishment. If punishment is to be
visited upon anyone, it is done by the Court and not by the
jury.

Mr. Foreman, the verdict must be unanimous. All
twelve of you must agree on your verdict before you may report.
The possible verdicts will be, on Counts 1 and 2, either
guilty or not guilty; then if on either 1 or 2 you find

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2 guilt or you find guilt on both of them, you then may
3 proceed to 3, and then your verdict there will be either
4 guilty or not guilty also.

5 If at any time during the course of your
6 deliberations you find that you disagree upon what you think
7 the facts are, just as the defendant has indicated to you,
8 the reporter will read it to you. All you have to do is
9 come out here and we will have it read. But when you send
10 such a request in or any request in, Mr. Foreman, please do
11 it on a piece of paper. Anybody can make a suggestion to
12 you as to what they want to find out, but you put it on a
13 piece of paper and sign your name, seal it and give it to
14 the marshal, and I will then answer it, have you brought in,
15 and have it read or whatever it is that you want.

16 Do you understand that?

17 THE FOREMAN: Yes, your Honor.

18 THE COURT: I have one last discussion with the
19 lawyers before we get on with this, and if you will excuse
20 me now, I will talk to them at the side bar.

21 (At the side bar)

22 MR. WILE: The last thing you said by way of
23 summing up was that the defendant must prove, and it should
24 be the government must prove.

25 (In open court)

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Charge of the Court

1 THE COURT: Apparently I said in the last summary
2 that the defendant must prove beyond a reasonable doubt,
3 but I think you all realize it was the government must prove.
4 That was a misstatement on my part, and I appreciate the
5 lawyers' bringing it to my attention. It is the government
6 that has the burden of proof.
7

8 (At the side bar)

9 MR. WILE: I have nothing else.

10 MR. PANZER: I have a few. I may be wrong, but you
11 did mention the presumption of innocence, but your Honor
12 did not say that the presumption of innocence even goes into
13 the jury room and it stays with him until it is overcome.

14 THE COURT: I think I did mention it, but I will
15 note the exception.

16 MR. PANZER: You talked about reasonable doubt.
17 I don't think your Honor mentioned that reasonable doubt
18 could arise from a lack of evidence.

19 THE COURT: Yes, I did.

20 MR. PANZER: Then I missed it.

21 THE COURT: I specifically said it.

22 MR. PANZER: One thing. You were talking about
23 evaluating the credibility of a witness, and you said if you
24 find that a witness has testified falsely as to a material
25 fact you must disregard that fact and you can accept so much

1 wc 81

Charge of the Court

2 of the rest as you want to. But I don't remember your
3 saying to the jury that they could reject all of his
4 testimony.

5 THE COURT: I did not say that, but I don't see
6 any need to do that, and I would just note the exception.

7 MR. PANZER: That is all the things I have.

8 THE COURT: All right. Do you feel satisfied?

9 THE DEFENDANT: I feel satisfied.

10 THE COURT: How about your lawyer? Are you happy
11 with him? I have been with him for about fifteen or twenty
12 years. He is a good lawyer.

13 THE DEFENDANT: Yes.

14 THE COURT: He did a good job for you.

15 THE DEFENDANT: He did a very good job. I think
16 I did a pretty good job too.

17 THE COURT: Frankly -- and he will tell you too,
18 because he listens to summations -- you did as well as any
19 lawyer that I have ever seen with what you had.

20 MR. WILE: Take this off the record.

21 (Discussion off the record)

22 (In open court)

23 THE COURT: In talking about how much of the
24 witness you believe, I said to you in effect that if the
25 witness has testified falsely to a material fact, you must

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wc 32 Charge of the Court 347
disregard that part of his testimony. And you may disregard
the rest of his testimony. I usually give an example which
would not have brought up this question at all, so I will
give you an example now of how that works, because there are
a lot of women on this jury.

If you make an omelet and you have a rotten egg in
the omelet, nobody gets it at home; it goes into the trash
basket. But that proves, the ones that are nodding that
that is so that you don't do it right, because you are
supposed to separate the eggs and smell them. In any
event, if it happens that way, you throw the omelet away,
right? That is the way it happens when there is a material
falsehood. You throw the whole thing away, right?

On the other hand, if you burn a piece of toast,
at least in my house, my wife scrapes off the part that is
burnt and I get it. That means that she kept that part of
it. But you could also throw the whole thing away. That
is a judgment for you to make in reference to this kind of
testimony.

Do I have the permission of the lawyers and the
defendant to send in the exhibits if they desire?

MR. PANZER: Yes, your Honor.

THE DEFENDANT: Yes, your Honor.

THE COURT: Without my coming downstairs again?

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Charge of the Court

MR. PANZER: Yes.

THE COURT: Fine. First I have to excuse the two alternates. I appreciate their serving. Mr. Proctor and Mr. Rockower, thank you very much. The statute requires me to dismiss you at this point. It is nothing personal. You are excused with the thanks of the Court.

THE CLERK: Would you return to Room 109, please.

(The two alternates left the courtroom.)

THE COURT: Now the marshals will be sworn.

(Two marshals were sworn.)

(At 12:40 p.m. the jury retired to deliberate upon a verdict.)

(At 3:10 p.m., jury not present)

THE COURT: They want some evidence, Mr. Panzer, from this note. They want all the evidence in the case including the address and name on the bank account. That is in the case, isn't it?

MR. WILE: Yes.

MR. PANZER: Yes, it is on the card.

THE COURT: Yes. So it is evidence, and the defendant agreed in person to let me do this without his being present, so I will mark this as a Court's exhibit.

(Note marked Court's Exhibit 4.)

THE COURT: Bring in the jury.

XXX

2 Will you and Mr. Wile look at that, and the
3 defendant? I am simply going to answer that there is no evi-
4 dence in the case and they will have to decide it on what
5 they have.

6 (Jury present)

7 THE COURT: I have a note from the jury:

8 "Can you explain the lettering on 1A and 1B
9 underneath 'Wheat Marketing Board' which says '(Cont. Wakd
10 4/21/74).' 1A; '(Cont. Wakd 7/31/74) 2A."

11 I cannot explain it to you, nor am I allowed to
12 explain it to you even if I knew, which I don't, because
13 there is no evidence in the case on this point and you are
14 bound by the document as it is.

15 Then it continues on: "Is this a contact?"

16 Now, somebody, or maybe all of you, has drawn
17 a conclusion, I presume, that that "(Cont.)" means "contact."
18 I don't know where you drew that from. Because there are
19 many, many other words that could be made from that. I can
20 think of one of them myself, but I am not even going to men-
21 tion it, because you cannot speculate on it any more than I
22 can. We don't know whether that "(Cont.)" is contact or not.
23 We don't know what it is at this point.

24 The same thing applies to the next question "Was
25 it contacted?" That is a speculation on your part too. You

1 remember I told you exhibits that are not in evidence may
2 not be speculated upon, and that is equally true of matters
3 that appear in evidence which have not been explained.
4

5 So you will have to decide this case on what you
6 have before you. We have no other information to give you on
7 this point.

8 Thank you. You may return to the jury room.

9 (At 3:15 p.m. the jury retired to deliberate
10 further.)

11 (At 4:40 p.m., jury not present)

12 THE COURT: I have a note which reads as follows:

13 "Request to be taken off the case. Foreman Juror.
14 No. 1."

15 I intend to call him in alone, in the absence of
16 the rest of the jury, and find out what is on his mind, find
17 out what is troubling him.

18 Bring in the foreman.

19 (The foreman took his seat in the jury box.)

20 THE COURT: Mr. Foreman, I have a note from you
21 which says:

22 "Request to be taken off the case, Foreman, Juror
23 No. 1."

24 That is you, is it not?

25 THE FOREMAN: Yes, your Honor.

1 THE COURT: Well, I cannot do that, because in
2
3 order to do that I would have to declare a mistrial. And
4 there are a lot of implications that rise as a result of a
5 mistrial, which I don't feel that I can explain to you at
6 this point, because it has nothing to do really with your
7 duties as a juror.

8 If you recall, you were sworn in as a juror in
9 this case and you said you would decide this case on the
10 evidence and the law. I suggest to you that whatever
11 judgment you make be in accordance with that, and if other
12 jurors are talking to you about other things which disturb
13 you of a personal nature or anything like that, you are to
14 disregard them and to vote your conscience.

15 THE FOREMAN: Well, let me say this, your Honor.
16 May I say at this time that you call the jury back in here
17 and tell them what you want discussed, because they talking
18 about everything else but that.

19 THE COURT: That is private in the jury room,
20 and as the foreman of the jury you have a right to say to
21 them, "I want you to discuss the case, and I want you to
22 discuss the evidence, and I want you to discuss the law in
23 the case. Other extraneous matters which have nothing to do
24 with this case should be reserved for other times. We are
25 discussing this case now. "

2 THE FOREMAN: OK, your Honor.

3 THE COURT: All right.

4 THE FOREMAN: Right. Thank you.

5 THE COURT: Wait a minute, now. In the light of
6 what you have said, I am going to instruct the jury that
7 they are to discuss the evidence in the case and the law in
8 the case and no extraneous matters, so that there is no
9 question in the mind that that is the direction of the Court.

10 Bring in the other jurors.

11 THE FOREMAN: Yes, your Honor.

12 THE COURT: You can stay here. The marshal will
13 bring them in.

14 (Jury present)

15 THE COURT: If you will just stand in the front
16 there, I just have a few remarks to make. It won't be
17 necessary to sit down.

18 I want to bring to your mind that you swore to
19 decide the case on the evidence and the law, and I suggest to
20 you that the discussions should be limited to those areas.
21 Extraneous matters and other matters which don't concern the
22 case should not be discussed. Please discuss the evidence in
23 the case, discuss the law in the case, and then arrive at a
24 judgment as a result of that discussion. Please do not
25 discuss -- and I am not suggesting that you have -- but I

suggest now that you discuss only the matters that are relevant to this case and the law as it concerns it.

Please retire to the jury room.

(At 4:46 p.m. the jury retired to deliberate further.)

THE DEFENDANT: Your Honor, may I make a request?

THE COURT: Yes.

THE DEFENDANT: That I be allowed to stay up in the courtroom while the jury is deliberating?

THE COURT: Where is the marshal?

THE MARSHAL: Right here, your Honor.

THE COURT: Would that be any hardship on you?

THE MARSHAL: Well, we would prefer to go downstairs, your Honor. I know he don't particularly appreciate it, but for security reasons. It only takes us two minutes to get up here.

THE COURT: You see, the trouble is that they have certain problems which don't pertain to you at all. For example, at this time they are probably taking people back to West Street, and so forth.

THE MARSHAL: And, your Honor, Mr. Boysky is going on a trip tomorrow and he is doing a little clerical part of it.

THE COURT: So I am afraid I will have to deny the

request at this time. But you will be brought up every time there is something that happens in the case. And if they get to the point where they can then let you stay up here, I am sure they will do it and I will allow it at that time. Because this is a bad time for them.

(Recess)

(At 5:30 p.m., jury present)

THE COURT: Preliminarily to making some remarks, I would like to know, Mr. Foreman, has the jury agreed on any counts at all at this time?

THE FOREMAN: Yes, we have, your Honor.

THE COURT: You have unanimously agreed on some of the counts?

THE FOREMAN: Yes, your Honor.

THE COURT: Have you agreed on Count No. 1?

THE FOREMAN: Yes, your Honor.

THE COURT: On Count No. 1, which charges the first of the two mail frauds, what is your verdict?

THE FOREMAN: Guilty, sir.

THE COURT: How about Count No. 2?

THE FOREMAN: Guilty, sir.

THE COURT: Count No. 3 you have not agreed upon?

THE FOREMAN: Not yet, sir.

THE COURT: Do you feel that you could come to some

2 agreement on that count tonight? I was in mind of sending
3 you home to give you plenty of time to think this over on
4 this last count.

5 THE FOREMAN: I would rather wait until the
6 morning.

7 THE COURT: In the morning.

8 THE FOREMAN: Right.

9 THE COURT: You would rather come back fresh in
10 the morning and then decide this third count?

11 THE FOREMAN: Yes, your Honor.

12 THE COURT: All right. Harken to your verdict
13 as your foreman has reported it. He has reported that on
14 Counts No. 1 and No. 2 of this indictment you have found the
15 defendant guilty as charged.

16 If that is your verdict, please answer yes. If
17 it is not, please answer no.

18 Will you poll the jury.

19 (Each juror, upon being asked by the Clerk "Is
20 that your verdict?", answered in the affirmative.)

21 THE COURT: The verdicts will be recorded as
22 indicated in the record.

23 Now go home tonight, and between this time and the
24 time you come back tomorrow morning at 10 o'clock, do not
25 discuss this case with anyone nor express nor form any opinion

as to this open count.

When you come back here tomorrow morning, you will report to the jury room at 10 o'clock, and once you get in the jury room you can continue to deliberate as to Count 3.

Please remember your oath and don't discuss this case with anyone nor look at anything which in any way affects this case in any of the media. If any news or anything comes on, just simply turn it off and disregard it.

Has anyone heard or seen or read anything concerning this case up to this point? You have not. All right, you are excused at this time.

(The jury left the courtroom.)

(In the robing room)

THE COURT: In the light of the jury's verdict on Counts 1 and 2, the Court declares a mistrial as to Count No. 3. Is there any objection to that?

MR. PANZER: No objection.

MR. WILE: The Government does not object.

THE COURT: Sentence December 5. Is that convenient, Mr. Panzer?

MR. PANZER: If we can make it early in the morning or late in the afternoon.

THE COURT: I think the defendant wants to get

2 this thing behind him and would rather have an earlier date.

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Let us put it on for the 27th of
5 November, then, which is approximately a month. Are you
6 engaged?

7 MR. PANZER: I will be on trial the 25th, but
8 we can do it early in the morning or late in the afternoon.

9 THE COURT: Yes. 9:30.

10 MR. PANZER: Fine.

11 THE COURT: 9:30 in the morning. The present
12 bail conditions are continued.

13 MR. PANZER: It is the 27th?

14 THE COURT: The 27th. The Clerk will tell the
15 jurors that they are excused from the trial.

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STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

AFFIDAVIT FOR SEARCH WARRANT

CONRAD BLEVINS, being first duly sworn,
deposes and says:

That on or about September 23, 1971, in the County of Alameda,
State of California, the crime of felony was committed by Lee J. Evans
in the
following manner, to wit: did murder Isaac Lewis and Isaac Gould
with a 9mm. pistol

That affiant has, and there is just and reasonable cause to believe, and he does believe, that there are the possession of

Lee J. Evans and Deborah, as
~~XXXXXX~~ and in and upon the premises
and building known and designated as and commonly called 9917 99th Avenue Court
in the City of Oakland in the said County of Alameda,
State of California, including all rooms and buildings used in connection with
said premises and building and adjoining the same and in a receptacle or safe
therein, certain articles, items and property which were the subject matter of
and which were used as a means of committing a felony, and which were and are
intended to be used as a means of committing a public offense, and which articles,
items and property constitute evidence which tends to show a felony has
been committed and that the said Lee J. Evans committed said felony.

That the said articles, items and property are described particularly as follows, to wit:

9 mm. pistol and ammunition therefore

That the following facts establish the existence of grounds for the issuance of a Search Warrant and further establish probable cause for believing that said grounds exist:

Affiant is a Sergeant of Police attached to the Homicide Section of the Criminal Investigation Division of the Oakland Police Department and is engaged in the apprehension of persons responsible for homicides.

On the afternoon of September 23, 1971, Affiant was advised of a double shooting at 1255 99th Avenue in the office of the Garden Manor Square Apartments and that Isaac Lewis and Isaac Green were the victims.

Affiant thereupon went to said address and personally observed the two mentioned victims lying on the floor of the office in a pool of blood and observed eight 9mm. empty shell casings littering the floor of the office. A 9mm. pistol was not found at the scene. (SEE OVER)

WHEREFORE, affiant prays that a Search Warrant issue commanding that an immediate search be made of the person(s) of the said Lee J. Evans

~~XXXXXX~~ and the premises and buildings described herein for the articles, items and property above described and that the same be brought before a magistrate and disposed of according to law.

Affiant

Subscribed and sworn to before me on
September 24, 1971.

Judge of the Court, County of
Alameda, State of California.

Both victims were dead. In the course of his investigation, Affiant spoke with Ronald Williams of 720 Weld Street in the City of Oakland who stated to Affiant that he had been in the vicinity of the office aforementioned and had heard a series of shots come from the direction of the office and had then observed Lee J. Evans who was personally known to him run from the office carrying a brief case and disappeared from his view in the direction of an apartment which he knows Lee J. Evans to live in located on 99th Avenue Court.

Affiant further was advised by the Pacific Telephone and Telegraph Company that the phone Number 569-2219 is leased to a Lee J. Evans at 9917 99th Avenue Court.

On September 24, 1971, Affiant personally spoke with Willie Hale of 9923 99th Avenue Court who told Affiant that he knows that Lee J. Evans lives at 9917 99th Avenue Court in the City of Oakland with a girlfriend by the name of Deborah Miles. Said Willie Hale further told Affiant that he works as a maintenance man at Garden Manor Square Apartments and knows that Deborah Miles rents said apartment at 9917 99th Avenue Court in the City of Oakland.

Affiant is further advised and believes from his experience that 9mm. pistols are easily disposed of and therefore request a nighttime execution of the warrant.

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

Mat Emery
SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, CONSTABLE, MARSHAL,
POLICEMAN OR PEACE OFFICER IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA:

1974 OCT -4 PM 12:45
Proof by affidavit having been this day made before me by Conrad Blevins
that heretofore and on or about September 23, 1971,
in the County of Alameda, State of California, the crime of Murder
was committed by Lee J. Evans
in the following manner, to wit: did murder Isaac Lewis and Isaac Gould
with a 9mm. pistol

That certain articles, items and property are the subject matter of and
were used and are intended to be used as a means of committing said public
offense and constitute evidence to show that a crime has been committed.

That the said articles, items and property are described particularly as
follows: 9 mm. pistol and ammunition therefore

That there is just probable and reasonable cause to believe, and said
affiant(s) does believe, that the above articles, items and property are now
concealed upon the person of Lee J. Evans

and in and upon those certain premises, includ-
ing all rooms and buildings used in connection with the premises and adjoining
same, and in any receptacle or safe therein, which premises are commonly called
and designated as 2017 90th Avenue Court in the City of Oakland,
County of Alameda, State of California, ~~and in and upon certain motor vehicle~~
~~commonly designated and described as~~

Good cause having been shown, YOU ARE THEREFORE COMMANDED in the day or
nighttime to make immediate search of the person(s) of Lee J. Evans
and of the premises and motor
vehicle above described for the said articles, items and property, and if you
find the same or any part thereof, to bring it forthwith before me for disposi-
tion according to law.

GIVEN UNDER MY HAND and dated this _____ day of _____,
19____, at _____ .m. hours.

William F. Brown
Judge of the Court, County of Alameda,
State of California.

Peace Officer, County of Alameda,
State of California.

TIME OF EXECUTION: 2:41 day of Sept., 1971,
at 1400 .m. hours.

S. J. [Signature]
Peace Officer, County of Alameda,
State of California.

LAT P.C. 24 Sep 71 1600 EVANS, Lee	Classification Address From Where Property Taken 4917-99 th AVE CRT. Complainants LEWIS, ISAAC GOULD, ISAAC	Arrest Number 171 0654 Date Check Number Evidence Property Held For Release Found Property Officers Receiving Property
Officers Finding or Recovering Property SGT. F. FARKAS 5743-C	Citizen Finding or Recovering Property	

- Removes, detailed description of same, including color, size, serial number, etc.
- X 1. 3 dog TAGS "FREDERICK L. ROLLINS", 2 KEYS ON CHAIN
 (From dresser - Bedroom)
- Item 2. ONE Empty 9mm "INTERARMS" CARTRIDGE BOX
 (Bedroom Closet)
- Item 3. SIX RECPTS FROM TRADERS FOR GUNS
 FOUR TAGS FOR GUNS
 (Bed stand, bedroom)
- Item 4. ONE "SUN OIL" GAS TAG, MINT 053
 (Bed stand, bedroom)
- Item 5. OPERATING MANUAL FOR BROWNING 9mm AUTO
 (Bed stand, bedroom)
- X 6. TWO CREDIT CARDS — MASTER CHARGE # 512 42014 097 089 } LYNWOOD EVANS
 CARTE BLANCHE # 947 760 339 4 } EVANS
 (Bed stand, bedroom)
- X 7. PASSPORT — "LYNWOOD EVANS" # B 1246473
 7-50⁰⁰ TRAV. CHEX — 6-10⁰⁰ TRAV. CHEX
 4-20⁰⁰ " " " " " "
 (Dresser drawer)
- X 8. PASSPORT — "JAMES HENRY ROLLINS" # A 010225
 MISC. FALSE IDENT. & BIRTH CERTIF.
 (Bed stand, bedroom)

Item 9

Item 10

Item 11

Each item to be filled in by Property Clerk Receiving Property:

Date received 24 Sep 71 Time received 2015 Received by JH2R

187 PC	Classification	Address	R. D. Number
Date and Time Property Found 24 Sep 71 1600	Address From Where Property Taken 9917-99th Ave. SE.	Delivered to Property Section By Sgt. C. Blevins 6154-C	71-59444 & 443
Subject EVANS, Lee J.	Complainants LEWIS, Isaac GOULD, Isaac	Check Proper Box Evidence <input checked="" type="checkbox"/> Property Held For Safekeeping <input type="checkbox"/> Found Property <input type="checkbox"/> Officers Receiving Property from Citizen <input type="checkbox"/>	
Citizen Finding or Recovering Property Sgts. Blevins, Farkas, Smith, & Cree	Citizen Finding or Recovering Property		

Itemized, detailed description of same, including color, size, serial number, etc.

Item 1. Two Boxes varied cal. brass casings

Item 2 Typewriter, IBM, Electric, Serial #6378327

Return 10/1/71 C.B.

Item 3 .30 cal. carbine, Plainfield make, ser. #28584
2 mags. for above weapon, loaded.

Item 4 Madsen .30 cal. rifle, ser. #0160-58

Item 5 S&W .357 ca. Revolver, Ser. #2K4959 Mod. 19

Item 6 Two belts and two holsters

Item 7 Brown paper sack containing misc. ammo and brass - assorted calibers.

Item 8 Three boxes 9 MM cartridges; one box of 50, one box of 36, one box of 37

Item 9 Speer bullet box containing 6 .357 rds. and one .30 cal. rd.;
.45 cal. mag, extended type
Small box 9 MM brass

X Item 10 Small wooden box containing addresses and address books

Item 11

Signature to be made by Property Clerk Receiving Property:

Date received

24 Sep 71

Time received

152015

Received by

JR 47 R

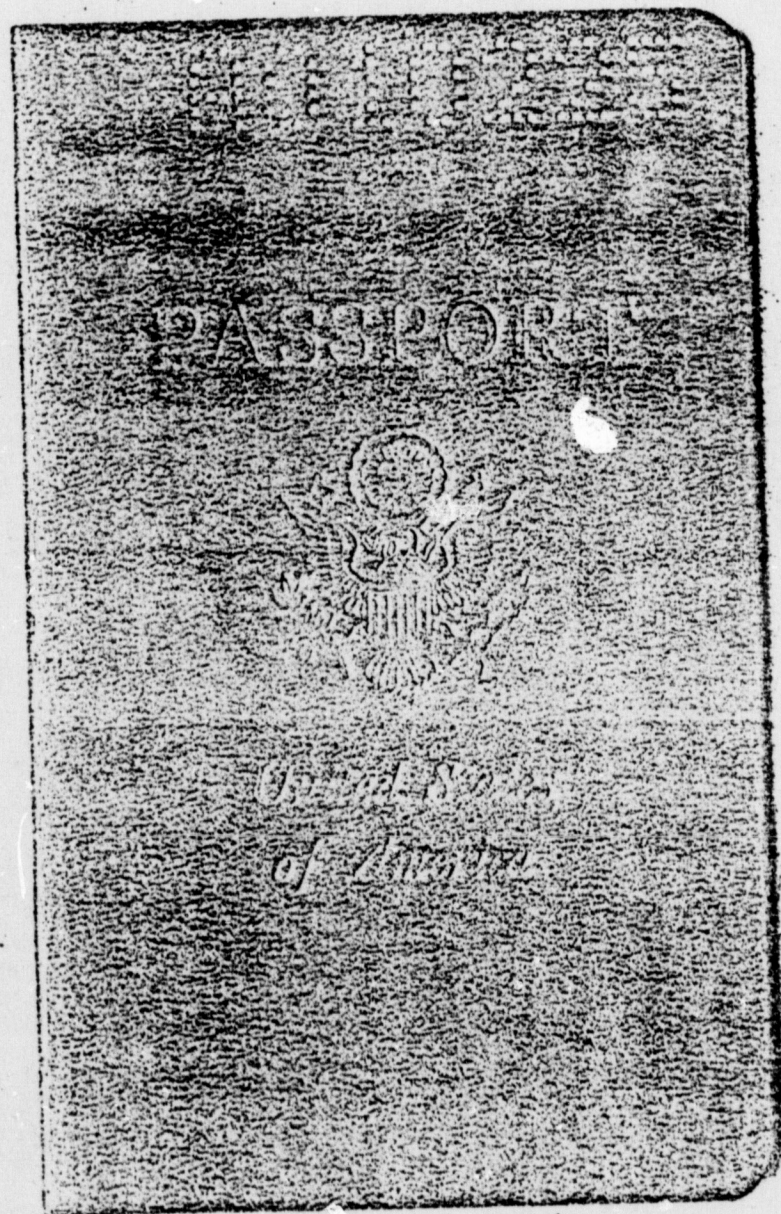
USA 33s-475
(ED. 4-23-71)

OCT 23 1974

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

SA

i.A.



(314)

9500109

9010005

PASSPORT NUMBER

PEN AND INK ENTRY OF THE PASS-
PORT NUMBER BY THE BEARER

PLEASE FILL IN THE NAMES AND ADDRESSES BELOW.

BEARER'S ADDRESS IN THE UNITED STATES:

1355 N. Leffingwell
ST. Louis MO 63106

BEARER'S FOREIGN ADDRESS:

IN CASE OF DEATH OR ACCIDENT NOTIFY THE NEAR-
EST AMERICAN DIPLOMATIC OR CONSULAR OFFICE AND:

Name Leola Rollins
Address 1355 North Leffingwell
ST. Louis MO. 63106
371-1240

IMPORTANT INFORMATION

This passport is the property of the United States Gov-
ernment and must be surrendered upon demand by an
authorized representative of the Department of State.
It is NOT VALID until signed BY THE BEARER
on page two.

EXPIRATION

This passport is valid for five years unless expressly
limited to a shorter period. The expiration date is given
on page two.

NEW PASSPORT

This passport must be presented when applying for a
new passport.

(CONTINUED ON LAST PAGE)



*The Secretary of State
of The
United States of America
hereby requests all whom it
may concern to permit the
citizen(s) of the United States
named herein to pass without
delay or hindrance and in
case of need to give said
citizen(s) all lawful aid and
protection.*

→ **WARNING**—ALTERATION, ADDITION OR MUTILATION OF ENTRIES IS PROHIBITED.
ANY UNOFFICIAL CHANGE WILL RENDER THIS PASSPORT INVALID.

NAME JAMES HENRY ROLLINS		
BIRTH DATE DEC. 18, 1940	BIRTHPLACE MISSOURI, U.S.A.	
HEIGHT 6 FEET 1 INCHES	HAIR BROWN	EYES GRAY
WIFE X X X	ISSUE DATE JAN. 27, 1970	
MINORS X X X	EXPIRATION DATE JAN. 26, 1975	
SIGNATURE OF BEARER <i>James H. Rollins</i>		

→ **IMPORTANT: THIS PASSPORT IS NOT VALID UNTIL SIGNED BY THE BEARER.**

James H. Rollins



PHOTOGRAPH ATTACHED
LOS ANGELES

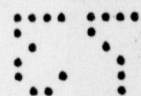
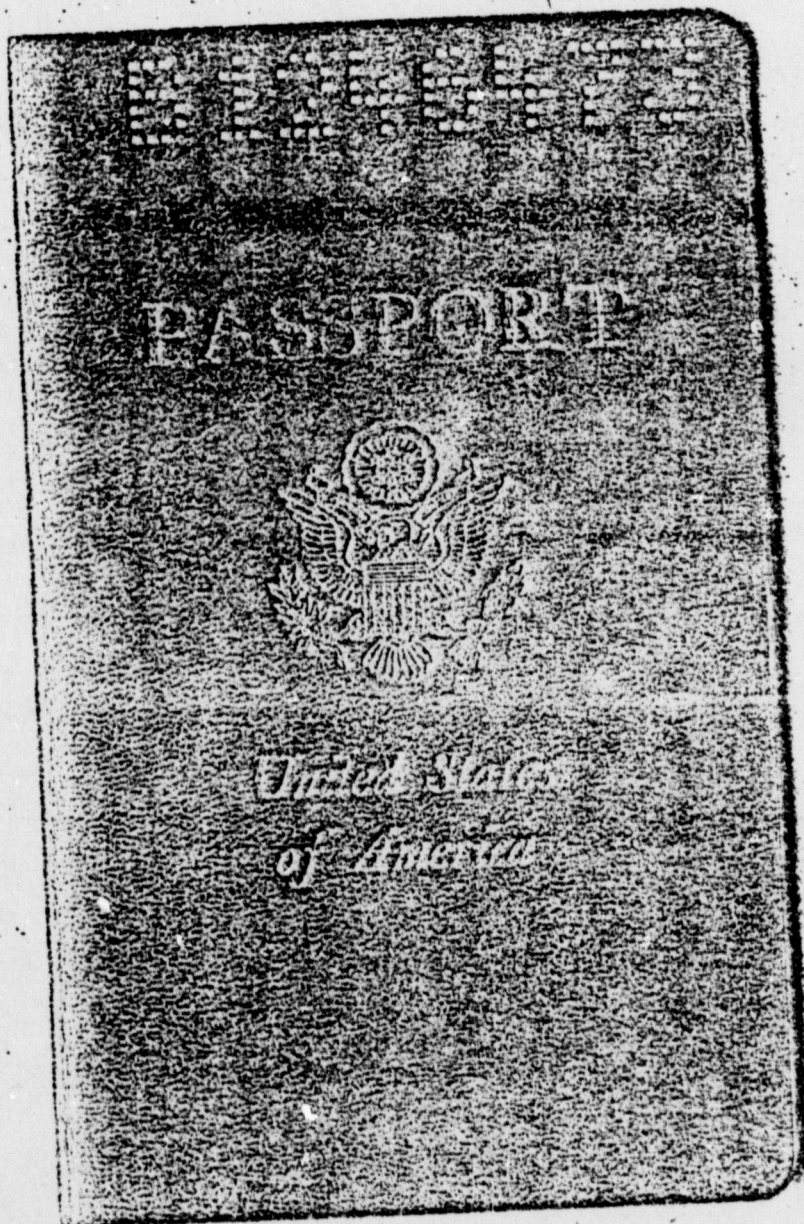
USA 338-475
(ED. 4-23-71)

OCT 23 1974

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

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id.



PASSPORT

PLEASE

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T NUMBER

B1246473

PEN AND INK ENTRY OF THE PASS-
PORT NUMBER BY THE BEARER

E FILL IN THE NAMES AND ADDRESSES BELOW.

S ADDRESS IN THE UNITED STATES:

4 Brighton St
Kland Calif 94602

S FOREIGN ADDRESS:

OF DEATH OR ACCIDENT NOTIFY THE NEAR-
EST AMERICAN DIPLOMATIC OR CONSULAR OFFICE AND:

Deborah Evans
9912 99th Ave St
Kland Calif

IMPORTANT INFORMATION

Passport is the property of the United States Gov-
t and must be surrendered upon demand by an
authorized representative of the Department of State.
NOT VALID until signed BY THE BEARER
e two.

ATION

Passport is valid for five years unless expressly
to a shorter period. The expiration date is given
e two.

PASSPORT

Passport must be presented when applying for a
ssport.

(CONTINUED ON LAST PAGE)

B1246473

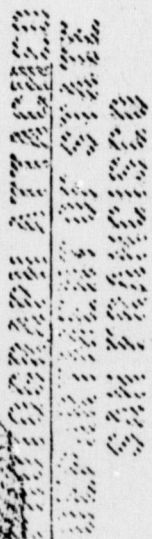


*The Secretary of State
of The*

United States of America

*hereby requests all whom it
may concern to permit the
citizen(s) of the United States
named herein to pass without
delay or hindrance and in
case of need to give said
citizen(s) all lawful aid and
protection*

Lynwood J. Evans
SIGNATURE OF BEARER



dividend of £1000

07484018

Visas

IT IS THE RESPONSIBILITY OF THE PASSPORT BEARER
TO OBTAIN NECESSARY VISAS

Visa / 2nd / 8

REPUBLIC OF KENYA	
Immigration Office	61
25 JUL 1971	
710943	
Jomo Kenyatta Airport	

REPUBLIC OF KENYA	
Immigration Office	61
21 JUL 1971	
Jomo Kenyatta Airport	

VP 8 V

REPUBLIC OF KENYA	
Immigration Office	97
21 AUG-1971	
Nairobi	

763395

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Visas

SEEN AT THE PASSPORT
CONTROL OFFICE
DAR ES SALAAM
GOOD FOR ENTRY TO KENYA
TO TANZANIA
DATE 27 JUL 1971
RE 22/50

REPUBLIC OF KENYA

27 JUL 1971

MOA-HONORO
IMMIGRATION OFFICER 3
- 2 AUG 1971

MOA-HONORO

TANZANIA - VISITOR'S PASS

IMMIGRATION OFFICER 3
MOA-HONORO

- 2 AUG 1971

Visit valid for two weeks

NOTE:- The holder of this Pass may
not accept employment without the
permission in writing of the Principal
Immigration Officer.

Visas

SERIAL NO 029630

SEEN AT THE KENYA MISSION
TO THE U. N. VISA SECTION
NEW YORK

GOOD FOR MULTIPLE/SINGLE JOURNEY(S)
TO KENYA WITHIN THREE / SIX / TWELVE
MONTHS OF DATE HEREOF IF PASSPORT
REMAINS VALID

DATE JUL 22 1971

TYPE OF VISA Visit

SIGNED [Signature]

FEE RECEIVED SH 02/50

SAVANNAH - VISITOR'S PASS

REGISTRATION NO. *Visas* 5
MOON II

19 AUG 1971

Valid for *extended up to 30/8/71*

NOTES: The holder of this Pass may not accept employment without the permission in writing of the Principal Immigration Officer



Visas

IMPORTANT INFORMATION

TRAVEL IN DISTURBED AREAS. If you travel in disturbed areas, you should keep in touch with the nearest American consular office.

PROLONGED RESIDENCE ABROAD. If you reside abroad for a prolonged period, you should register at the nearest American consular office.

LOSS OF NATIONALITY. You may lose your United States nationality by being naturalized in, or by taking an oath or making a declaration of allegiance to, a foreign state; or by serving in the armed forces or accepting employment under the government of a foreign state. For detailed information, consult the nearest American consular office.

WARNING TO DUAL NATIONALS. A person is considered a dual national when he owes allegiance to more than one country at the same time. A claim to allegiance may be based on facts of birth, marriage, parentage or naturalization. A dual national may, while in the jurisdiction of the other country which considers him its national, be subject to all of its laws, including military service. If difficulties occur, consult the nearest American consular office.

LOSS, THEFT OR DESTRUCTION OF PASSPORT. The loss, theft or destruction of a passport is a very serious matter and must be reported immediately to local police authorities and to the Passport Office, Department of State, Washington, D.C. 20524, or to the nearest American consular office. A new passport will be issued only after careful investigation which will entail considerable delay and result in the issuance of a replacement passport valid for no more than three months.

ALTERATION OR MUTILATION OF PASSPORT. This passport must not be altered or mutilated in any way. You must not alter any dates or make any changes in your description, on the photograph, or on any other page of this passport. Alteration may make it INVALID and, if willful, may subject you to prosecution (Title 18, U.S. Code, Section 1543). Only authorized officials of the United States or of foreign countries, in connection with official matters, may place stamps or make statements, notations or additions in this passport. However, you may amend or update information supplied by you on the inside of the front cover of this passport, if necessary.

IMMUNIZAT

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Mr. Tabor Joseph I
UNIVERSITY OF NAIROBI
P.O. BOX 30344

ROBERT R. CODY, a/k/a
JAMES H. ROLLINS

PETITIONER :

-v-

PETITION FOR WRIT OF HABEAS

CORPUS

LOUIS J. GENGLER,

RESPONDENT :

CITY OF NEW YORK)
STATE OF NEW YORK : ss.
COUNTY OF NEW YORK)

ROBERT R. CODY, being duly sworn deposes and says under Oath, that the information herein is true and correct to the best of his knowledge and belief;

1. Petitioner is confined in the Federal Detention Headquarters at 427 West Street New York, New York, of which respondent Louis J. Gengler is the warden.

2. The petitioner was found guilty on two counts of indictment number S 74 Cr. 951 in Federal District Court for the Southern District of New York, before the Honorable John M. Cannella and a jury, of aiding and abetting in a scheme to defraud by use of the mails. (18 U.S.C.A. 1341 & 2)

3. This conviction is presently on appeal to the second circuit Court of Appeals.

4. Petitioner, because of the inadequacy and incompetence of his Court appointed legal aid attorney Larry Greenberg, requested of the Court and was allowed to proceed pro-se.

STATEMENT OF FACT

5. On or about September 9, 1974, petitioner was arrested by two postal inspectors without an arrest warrant, arraigned and taken to the Federal Detention Headquarters.

6. The day after petitioner arrived at the prison he asked and was told by an inmate that there was some law books (law library) in a small room on the second floor of the building;; he then proceeded to the room to do some legal research pursuant to his case.

7. Petitioner didn't find a "law library" but found a small 6 feet by 6 feet cell in which about twenty bound volumes of the Federal Reporter 2d; 15 bound volumes of the Federal Supplement; sixty copies of advance sheets and the Internal Revenue Code of U.S.C.A., were scattered in disarray on the shelves.

8. There was a desk and a chair in the room, no librarian and there was no other reference books available.

9. Petitioner had to wait until the next day before he could gain access to the room because only one person was allowed to be locked in the room at a time, being that it was so small.

10. Since petitioner was representing himself, he had to make pre-trial motions, defend himself at trial and make post-trial motions with only the meager facilities available to him, while the assistant United States Attorney had access to a well stocked and adequate law library in the U. S. Courthouse.

11. Petitioner submitted a motion to the Trial Court on October 30, 1974, after the jury trial and with his post-trial motions requesting that the Court order the Bureau of Prisons, and specifically the warden of the detention headquarters to set up an adequate law library stating as follows:

"...so that he may do legal research pertainant to his case or some other means for getting the material he needs be worked out."

12. On November 14, 1974, the above stated motion was denied by the Court with this casual statement/opinion ;

"...Denied except that such material as is presently available at the detention center --So ordered."

13. Petitioner has been able to find only one case out of approximately eight cases cited by the Court in denying his motions in the "law library." (See attached exhibit A)

14. Petitioner has been able to find only one case out of approximately ten cases cited by the Assistant U.S. Attorney in his affidavit opposing petitioners post-trial motions in said "law library". (See attached exhibit)

15. Petitioner has not been able to find any of the cases that he needs to support his motions, nor for that matter to be able to do any legal research relating to his appeal because of the lack of an adequate law library.

16. On or about November 20, 1974, the law books in the small room were moved from the second floor to the third floor auditorium where the regular library facilities are located.

17. On or about December 11, 1974 a list of all of the available (old and newly added) material in the newly established library was drawn up by Mr. Harris, the Director of Education at the Headquarters. (See attached exhibit B)

18. Petitioner learned from inquiry and from a reading of the Bureau of Prison policy statement 2001.2b, that was issued May 8, 1972, after the ruling of the United States Supreme Court in Younger v Gilmore, 404 U. S. 15(1971), which required each prison to maintain an adequate law library and specified what books must be in each library in order for it to be adequate.

19. The institution policy statement of the headquarters a dated January 8, 1973, also sets out the books that must be available in the institutional library if it is to be adequate.

20. For some reason these listed books are not all available in the institutional library, as required.

21. The detention center is a place where petitioner was housed while awaiting trial, since he could not make bail; therefore it is essential for petitioner and others similarly situated at this institution to have access to an adequate law library; otherwise access to the Court is meaningless and due process is denied.

ingful access to the Court which caused him to be deprived of his liberty without due process of law.

23. Petitioner is now being illegally detained because of said constitutional violation.

24. Further it would be a denial of due process of law as guaranteed under the fifth and fourteenth Amendment to the United States Constitution to permit petitioner's conviction and sentence of three and one-half years for aiding and abetting in mail fraud to stand in view of the facts outlined above.

25. Under the unusual circumstances of this conviction I request the Court to hold a hearing at which time all the facts can be further developed.

WHEREFORE, I respectfully ask this Court to issue its Writ of Habeas Corpus requiring respondent to produce me before the Court so that the matter may be inquired into in accordance with law and that pending the determination of this matter the respondent be restrained from moving me to another institution.

Respectfully submitted Pro-se

Robert R. Cody

ROBERT R. CODY 81684-158
427 West Street
New York, New York 10014

Duly sworn before me this 13th
day of January, 1975

Gutting 10111 - Case 730
FOH 2 y

AUTHORIZED BY THE ACT OF JULY 7, 1956

I, ROBERT R. CODY, have this day served a copy of this petition on the Warden or one of his representative personally and I have mailed a copy to the U.S. Attorney, Paul J. Curren, via U.S.

Mail.

EXHIBIT A

This is a list of the cases cited by the Court in its opinions, cases cited by the assistant U.S. attorney in his opposing affidavits and some of the cases I have been trying to find. This is just one example of how inadequate the law library at the federal detention really is. I could not find these cases. in the law library.

<u>Gilmore v Lynch</u>	319 F. Supp 105
<u>Younger v Gilmore</u>	404 U.S. 15 (1971)
<u>Bivens v Six Unknown Fed. Nor. Agents</u>	403 U.S. 388(1971)
<u>Howard v warden</u>	348 F Supp 1204 (E.D. Va 1972)
<u>Johnson v Aldridge,</u>	349 F. Supp 1230 (M.D. Pa 1972)
Ray v U.S.	412 F2d 1052 (9th cir. 1969)
Ford v U.S.	352 F2d 927 (D.C. Cir. 1965)
U. S. v Robinson	414 U.S. 218 (1973)
U.S. v Lippman	455 F2d 1083
U.S. v Russian	192 F Supp 183 (1961)
Giordenello v U.S.	357 U.S. 480 (1958)
Dibella v U.S.	284 F2d 897 (2nd Cir. 1960)
McDonald v Pless	238 U.S. 264 (1915)
Mattox v U.S.	146 U.S. 140 (1892)
U.S. v Crosby	294 F2d 928 (1961)
Mittelman v U.S.	368 U.S. 984 (1962)
Hagner v U.S.	285 U.S. 427 (1932)
U.S. v Cushin	281 F 2d 669 (1960)
U.S. v Steinberg	62 F2d 77 (1932)

This was taken from some of the opinions of the court.

Robert Cody

Exhibit AB

LAW REFERENCES IN MCC LIBRARY

11 Dec 74

<u>TITLE</u>	<u>VOL</u>
FEDERAL REPORTER 2d	452
(Compiled)	453
	455
	457
	458
	462
	463
	465
	466
	467
	468
	471
	473
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	482
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	488
	489
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	492
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	494
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	496
	497
Federal Reporter 2d	449
(Advance Paperback,	451
May not be complete)	454
	456
	459
	460
	461
	464
	469
	470
	472
	476
	479
	481
	486
	487
	497
	498
	499
	500
	501

<u>TITLE</u>	<u>VOL</u>
Federal Supplement	336
	337
	338
	354
	355
	356
	357
	358
	359
	360
	362
	363
	364
	365
	366
	367
	368
	369
	370
	371
	372
	373
	374
	375
	376
Supreme Court Reporter	92
	93

Decisions of U.S. Supreme Court
(Lawyers Co-op)

1963-64	TERM
64-65	"
65-66	"
66-67	"
67-68	"
68-69	"
69-70	"
70-71	"
71-72	"
72-73	"

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Certificate of Service

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I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

E. Thomas Doyle